

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Public Service Company	:	
d/b/a AmerenCIPS	:	
	:	07-0532
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant	:	
To Section 8-406 of the Illinois Public	:	
Utilities Act, to construct, operate and	:	
Maintain new 138,000 volt electric lines in	:	
Madison County, Illinois.	:	

**RESPONSE OF THE STAFF OF THE
ILLINOIS COMMERCE COMMISSION TO AMERENCIPS'
MOTION TO STRIKE PORTIONS OF STAFF'S REPLY BRIEF**

NOW COMES Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, and pursuant to Section 200.190 of the Illinois Commerce Commission's ("Commission") Rules of Practice, 83 Ill. Adm. Code 200.190, hereby responds to AmerenCIPS' July 14, 2008 Motion to Strike Portions of the Reply Brief of Staff of the Illinois Commerce Commission ("Motion to Strike").

I. AMERENCIPS MISSTATES STAFF'S POSITION WITH RESPECT TO THE CONTESTED ISSUE IN THE INSTANT PROCEEDING

AmerenCIPS' Motion to Strike clearly misstates Staff's position in the instant proceeding. As Staff stated in its Reply Brief ("RB"), the contested issue in this proceeding is whether the Commission should issue an Order pursuant to Section 8-503 of the Illinois Public Utilities Act (the "Act") for both, or only one, of

the 138 kV transmission lines that AmerenCIPS proposes to construct. (Staff RB, pp. 1-2) In its RB, AmerenCIPS adds to Staff's one contested issue language to which Staff takes objection. Staff has never suggested in either briefs or testimony that AmerenCIPS should seek eminent domain authority pursuant to Section 8-509 of the Act whenever it requests a Certificate of Public Convenience and Necessity ("Certificate") pursuant to Section 8-406 of the Act, as AmerenCIPS alleges (AmerenCIPS Motion to Strike, p. 2). Staff's position is, and has always been, that a utility should concurrently request Section 8-503 and Section 8-509 authority – not that it should seek Section 8-509 eminent domain authority at the same time it seeks a Section 8-406 Certificate.

II. STAFF PROPERLY RESPONDED TO AMERENCIPS' INITIAL BRIEF ARGUMENTS

AmerenCIPS acknowledges the applicability of Section 200.800(c) of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.800(c). (*Id.*, p. 1) Section 200.800(c) provides:

Parties and the Staff shall not raise an argument in their reply briefs that is not responsive to any argument raised in any other party's or the Staff's opening brief.

In accordance with Section 200.800(c), Staff's Reply Brief arguments responded directly to AmerenCIPS' Initial Brief arguments. As such, if AmerenCIPS does not now comprehend Staff's Reply Brief arguments, it only has itself to blame for the arguments it raised in its Initial Brief. Moreover, AmerenCIPS' argument that Staff should have raised certain arguments in its Initial Brief in anticipation of AmerenCIPS raising those issues in its Initial Brief (*Id.*, pp. 1, 2, 3) is ludicrous.

Regardless of whether Staff has addressed the eminent domain issue in other dockets (*Id.*, p. 3), Staff simply did not anticipate that, in its Initial Brief in this case, AmerenCIPS would accuse Staff of misunderstanding the requirements for obtaining eminent domain authority pursuant to Section 8-509 of the Act, accompanied by a one-sided legal argument (AmerenCIPS IB, pp. 8-12). Staff had every right to respond in its Reply Brief to AmerenCIPS' unanticipated Initial Brief legal arguments and would be denied its due process rights if precluded from so doing.

A. Section I. A. 2. of Staff's Reply Brief Directly Addresses AmerenCIPS' Initial Brief

Section I. A. 2. of Staff's Reply Brief, *Section 8-503 and Section 8-509 of the Act*, discusses the relationship between Section 8-503 and 8-509 of the Act and how requests for relief thereunder have been treated differently by the Commission in various docketed proceedings. This discussion is directly responsive to AmerenCIPS' Initial Brief. For example, Section I. A. 2. of Staff's Reply Brief responds to the following language in AmerenCIPS' Initial Brief:

. . .(ii) for the Commission to grant eminent domain authority, the utility must show not just that an order under Section 8-503 has been received, but that the project is necessary and that the utility has negotiated for rights-of-way with affected landowners in good faith.

(AmerenCIPS IB, pp. 1-2)

Section I. A. 2. of Staff's Reply Brief also responds to the following language in AmerenCIPS' Initial Brief:

Staff's opposition to the issuance of a Section 8-503 order for Line 1 should be rejected because Staff misunderstands the nature of the Commission's approval of eminent domain authority, and proposes an impractical solution.

(*Id.*, p. 8)

Further, Section I. A. 2. of Staff's Reply Brief responds to the entire section of AmerenCIPS' Initial Brief titled, *Staff's Opposition to the Issuance of a Section 8-503 Order is Based on a Misunderstanding of the Requirements for Obtaining Eminent Domain Authority*. (*Id.*, pp. 8-12) In fact, Staff's Reply Brief demonstrates not only that Staff clearly understands the requirements for obtaining eminent domain authority but also that AmerenCIPS presents a one-sided argument which completely ignores recent Commission Orders that state that once a Section 8-503 Order is issued, Section 8-509 of the Act authorizes the utility to use the power of eminent domain.

B. Section I. A. 3. of Staff's Reply Brief Directly Addresses AmerenCIPS' Initial Brief

Section I. A. 3. of Staff's Reply Brief, *Reasonable Attempts to Acquire the Property*, demonstrates that the Commission's approach to a showing by a petitioner of having engaged in reasonable attempts to acquire the property has been variable. This discussion is also directly responsive to AmerenCIPS' Initial Brief. Beginning on page 9 of its Initial Brief, AmerenCIPS discusses at length its contention that a utility seeking eminent domain authority from the Commission must demonstrate that it has negotiated in "good faith" with the affected property owners. (AmerenCIPS IB, pp. 9-12) Section I. A. 3. of Staff's Reply Brief argues that not only has the Commission issued Orders contrary to this contention (*e.g.*,

Docket No. 05-0188) but also that Section 8-509 of the Act contains no “good faith” requirement. Staff’s suggestion that the term “good faith negotiations” be avoided (Staff RB, pp. 15-16) is in direct response to AmerenCIPS’ insistence that “good faith” negotiations be examined in Section 8-509 eminent domain proceedings (AmerenCIPS IB, pp. 9-12). As such, Staff has not violated Section 200.800(c) of the Commission’s Rules of Practice, as AmerenCIPS alleges (AmerenCIPS Motion to Strike, p. 4).

III. STAFF’S ARGUMENTS ARE BASED ON THE RECORD IN THE INSTANT PROCEEDING

AmerenCIPS argues that certain of Staff’s Reply Brief arguments are not based on the evidentiary record that was developed in the instant proceeding. (AmerenCIPS Motion to Strike, pp. 4-5) Staff disagrees. AmerenCIPS quotes allegedly objectionable phrases and sentences from Staff’s Reply Brief that pertain to the affected landowners. (*Id.*) However, Staff’s Reply Brief arguments are based on both Staff witness Rockrohr’s Rebuttal Testimony (ICC Staff Exhibit 2.0, p. 2) and AmerenCIPS’ own witness Trelz’s Surrebuttal Testimony (AmerenCIPS Exhibit 8.0, p. 2) regarding affected landowners. As such, Staff’s Reply Brief arguments are based on and supported by the evidentiary record.

Moreover, despite allegations to the contrary (AmerenCIPS Motion to Strike, p. 5), AmerenCIPS had the opportunity to respond to Staff witness Rockrohr’s Rebuttal Testimony arguments regarding the affected landowners and, in fact, did so in its Surrebuttal Testimony. As such, AmerenCIPS has not

been prejudiced by Staff's Reply Brief arguments and should not be permitted to file an additional brief regarding this issue.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Staff respectfully requests that AmerenCIPS' Motion to Strike Portions of Staff's Reply Brief be denied.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda M. Buell". The signature is written in a cursive, flowing style.

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Commerce Commission

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